HON'BLE Dr. JUSTICE G. YETHIRAJULU

Writ Petition No.9640 of 2000

Dated this the 12th day of December, 2007

Between:

K. Varadaraju … Petitioner

AND

Transmission Corporation of Andhra
Pradesh Limited at Vidyut Soudha, Somajiguda,
Hyderabad, rep.by its Chairman &
Managing Director and 4 othes … Respondents

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Writ Petition No.9640 of 2000

ORDER:

This Writ Petition has been filed seeking to declare that the order dated 31.03.2000 passed by the second respondent and the order dated 29.03.1997 passed by the third respondent are illegal, arbitrary and without jurisdiction.

2) The petitioner is a consumer of the first respondent under L.T. Category No-III with service connection bearing No.23 of Ananthavaram Village of Eluru Mandal, West Godavari District. The said power connection was taken for drawing water from fish tanks. On 15.11.1995 the Assistant Divisional Engineer, Eluru inspected the service connection and found that the consumer is using excess energy to an extent of 13.5 HP though the contracted load was 7.5 HP. A show cause notice was issued to the petitioner and after receiving the reply, an order was passed holding that drawing excess energy amounts to mal practice. Therefore, the consumer has to pay a sum of Rs.1,03,279/- towards consumption charges. Being aggrieved by the same, the petitioner made a representation to the concerned

authority, but it was revised. He preferred an appeal to the appellate authority and the appellate authority through the order dated 31.03.2000 assessed the amount at Rs.63,823.50 by reducing the amount fixed by the Superintending Engineer. Being aggrieved by the same, the present writ petition has been filed by the petitioner challenging its validity and legality.

3) So it has to be considered whether drawing excess energy amounts to mal practice.

4) Under condition No.39.1 defined the mal practice. The expression 'mal practice' shall include any violation of law or the terms and conditions of supply framed under Section 49 of the Electricity Supply Act, 1948 including the pilferage in particular the following.

> "39.1.2 (a) exceeding the contracted load without specific permission of the Board in respect of L.T. services other than the categories-I and II i.e., domestic, non-domestic and commercial."

5) The contention of the respondents is that though the contracted load of the petitioner was 7.5 HP he was drawing the load of 13.5 HP, therefore, it comes within the definition of 'mal practice' under Condition No.39.1 of the terms and conditions of supply of electricity.

6) In the explanation given by the petitioner, he conceded that a motor with a capacity of 13 HP was connected to the service connection, but he contended that his wife was having another connection with service No.24 with a contracted load of 7.5 HP. Since he utilized the electricity not more than the contracted load of both of them, it does not amount to mal practice and he is not liable to pay any charges.

7) However, the Superintending Engineer after considering the representation and the relevant provisions came to the conclusion

that drawing of the electricity exceeding the contracted load amounts to mal practice and he assessed the amount of Rs.1,03,279/- by taking 161.14 units per HP per month. On an appeal, the Chief Engineer felt that the number of units adopted by the Superintending Engineer is excessive. Therefore, he adopted 96 units per HP per month and accordingly came to the estimated charges at Rs.63,820.50.

8) The learned counsel for the petitioner submitted that as per B.P. (Operation-Comml) Ms.No.281, dated 16.03.1996 whenever there is detection of excess load where the total connected load is 7.5 HP or below at the time of detection one month notice shall be given to regularize the additional connected load, payment of required service line charges, development charges and consumption deposit etc. Since the concerned authorities failed to follow the subsequent terms and conditions under B.P.Ms.No.281, the order cannot be sustained and it is liable to be quashed.

9) The learned counsel for the respondents submitted the detection of excess energy was noticed on 15.11.1995 and as B.P.Ms.No.281 came into force on 16.03.1996, it has no retrospective effect and it cannot be applied to the present case.

10) By taking into consideration the submissions made by both parties, I am of the view that B.P.Ms.No.281, dated 16.03.1996 is not applicable to the present case and as it has clearly made out that there is a mal practice done by the petitioner, the Chief Engineer was right in coming to the conclusion that there was a mal practice and as he adopted the reasonable amount towards energy charges, I do not find any illegality in the order passed by the second respondent and as the amount was reasonably fixed, I do not find any arbitrariness in fixing the energy charges. Therefore, I do not find any merits in the writ petition.

11) Accordingly, the Writ Petition is dismissed. However, in the circumstances there shall be no order as to costs.

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Dr. G. YETHIRAJULU, J

Date: 12—12--2007
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